IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

ROGER BREEDING,	)	
	)	C.A. No. 05C-06-049 (JTV)
Plaintiff,	)	
	)	
v.	)	
	)	
HILLANDALE FARMS OF DELAWARE, INC., and TRAVELERS INDEMNITY COMPANY,	)	
	)	
Defendants.	)	

Submitted: October 20, 2006
Decided: January 31, 2007

Walt F. Schmittinger, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff.

H. Garrett Baker, Elzufon, Austin, Readron, Tarlov & Mondell, Wilmington, Delaware. Attorney for Defendants.

Upon Consideration of Plaintiff's
Motion For Summary Judgment
DENIED

Upon Consideration of Defendants'
Motion For Summary Judgment
DENIED

VAUGHN, President Judge

Breeding v. Hillandale Farms of Delaware, et al.
C.A. No. 05C-06-049
January 31, 2007

OPINION

The plaintiff, Roger Breeding ("Mr. Breeding"), and the defendants, Hillandale Farms of Delaware, Inc. and Travelers Indemnity Company ("Travelers") have filed cross-motions for summary judgment.

FACTS

Mr. Breeding suffered a work-related injury on February 8, 2001 while employed at Hillandale Farms of Delaware. On December 16, 2004, the defendants acknowledged the injury and approved surgery which had been recommended for Mr. Breeding.[1] At that time, the defendants requested production of all medical bills associated with the surgery.

The surgery took place on February 15, 2005. The expenses of the surgery included $78,645.36 for Christiana Care Health Services ("Christiana Care") and $30,464.40 for First State Orthopaedics ("First State")[2]

Travelers received three separate bills relating to Mr. Breeding's surgery from First State on March 7, 2005. All three bills were paid at a reduced rate on March 25, 2005. It is undisputed that Travelers paid First State's bills prior to the accrual of *Huffman* damages.[3]

---

[1] A follow-up correspondence dated January 25, 2005 again authorized the surgery.

[2] First State's total bill was the product of three separate bills. Christiana Care's total bill was the result of one bill.

[3] "Complaints filed under § 2357 to collect unpaid workers' compensation awards have come to be known as "*Huffman*" claims. *Rawley v. J.J. White, Inc.,* 2006 Del. Super. LEXIS 254 at *5 *citing National Union Fire Ins. Co. v. McDougall*, 877 A.2d 969, 971 (Del. 2005).

Mr. Breeding claims that Christiana Care's bill was mailed to Travelers on February 23, 2005 and that if Travelers didn't receive the bill, it was because Travelers had provided an incorrect mailing address to which to send it. Travelers claims that it never received the Christiana Care bill allegedly mailed on February 23, 2005.

It is undisputed that Travelers did receive a bill from Christiana Care via fax on May 13, 2005 and that that bill was subsequently paid on July 1, 2005. The bill was paid at a reduced amount pursuant to an agreement between Christiana Care and Travelers.

At issue in this case is whether Travelers payment of Christiana Care's bill was untimely, in violation of 19 *Del. C.* § 2357.[4]

STANDARD OF REVIEW

When opposing parties make cross-motions for summary judgment, neither party's motion will be granted unless no genuine issue of material fact exists and one of the parties is entitled to judgment as a matter of law.[5] The facts must be viewed

---

[4] In his Complaint, Mr. Breeding seeks *Huffman* damages for the untimely payment of medical bills by Travelers. In paragraph 11 of his cross-motion for summary judgment and in his attached affidavit setting forth the calculation of damages, Mr. Breeding makes clear that the relief sought is *Huffman* damages for the untimely payment of Christiana Care's bill by Travelers. The Court will address this issue; however, the Court will not address extraneous issues raised by the parties in their cross-motions for summary judgment.

[5] Superior Court Civil Rule 56(c); *In re 244.5 Acres of Land*, 2001 Del. Super. LEXIS 31 at *7-8 *quoting Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 745 (Del. Super. Ct. 1997).

in the light most favorable to the non-moving party.[6]

DISCUSSION

Mr. Breeding contends that Travelers paid Christiana Care's bill late, thereby wrongfully terminating workers' compensation benefits under 19 *Del. C.* § 2347 in that suspension of benefits occurred without the plaintiff's consent and without a hearing on the merits or order of the IAB. Mr. Breeding claims that due to Travelers violation of § 2347, he is entitled to seek relief under the remedies available in 19 *Del. C.* § 2357.

Workers' compensation payable to an employee cannot be unilaterally terminated by an employer without an order of the IAB, following a hearing on the matter.[7] "When an employer violates § 2347 by wrongfully withholding benefits, an employee is entitled to seek relief under the remedies available under § 2357."[8] Those remedies include liquidated damages pursuant to the Wage Payment and Collection Act, 19 *Del. C.* §§ 1103(b) and 1113(a).[9]

On December 16, 2004 and again on January 25, 2005, the defendants acknowledged Mr. Breeding's injuries and agreed that Mr. Breeding's medical

---

[6] *Guy v. Judicial Nominating Comm'n,* 659 A.2d 777, 780 (Del. Super. Ct. 1995).

[7] *Rawley v. J.J. White, Inc.,* 2006 Del. Super. LEXIS 254 at *4 *citing* 19 *Del. C.* § 2347.

[8] *Id. citing Nat'l Union Fire Ins. Co. v. McDougall,* 877 A.2d 969, 970-971 (Del. 2005); *Huffman v. Oliphant,*432 A.2d 1207, 1210 (Del. 1981).

[9] *Harrigan v. City of Wilmington*, 2006 Del. Super. LEXIS 23 *2-3 *citing Huffman,*432 A.2d at 1210.

expenses associated with his February 15, 2005 surgery were compensable. "For purposes of a *Huffman* claim, a voluntary agreement between the parties is not contingent on IAB approval."[10]

Under § 2357, penalties accrue only "[i]f default is made by the employer for 30 days after demand in the payment of any **amount due** under this chapter..."[11] The Workers' Compensation Act requires that "[a]ll medical expenses be paid within 30 days after the bills and documentation for said expenses are received by the employer or its insurance carrier for payment, unless the carrier or self-insured employer notifies claimant or the claimant's attorney in writing that said expenses are contested or that further verification is required."[12]

Thus, a bill which the carrier fails to contest or request verification of, becomes due 30 days after it is received. Once the bill becomes due and proper "demand" has been made, a 30 day default period begins to run for the purposes of § 2357. After the 30 day default period has expired, *Huffman* damages accrue.

Since the bill was not disputed by Travelers, it became due 30 days following receipt. Whether Travelers is subject to *Huffman* damages pursuant to § 2357 for the bill paid on July 1, 2005, hinges on whether Travelers is deemed to have received Christiana Care's bill on February 23, 2005 or May 13, 2005. If the bill is deemed

---

[10] *Rawley,* 2006 Del. Super. LEXIS 254 at *7 *citing Seserko v. Milford School Dist.,*1992 Del. Super. LEXIS 47 at *2.

[11] 19 *Del. C.* § 2357. (Emphasis added.)

[12] 19 *Del. C.* § 2362(b). *See also* Industrial Accident Board Rule No. 4(B).

to have been received by Travelers on February 23, 2005, then payment was made after the accrual of *Huffman* damages. However, if the bill is deemed to have been received by Travelers on May 13, 2005, then the bill was paid prior to the accrual of *Huffman* damages.

Mr. Breeding claims that Christiana Care's bill for the February 15, 2005 surgery should be considered to have been received by Travelers on February 23, 2005. In support of this claim, Mr. Breeding alleges that the bill was mailed on February 23rd and that if Travelers didn't receive it, it was because Travelers supplied the incorrect address to which to send the bill. Travelers claims that it never received the February 23, 2005 bill and that the proper date for which to consider the bill received is May 13, 2005, the day that it claims it first received Christiana Care's bill via fax.

"Generally speaking, the law requires that notice be actually received in order to be effective."[13] "The mere deposit in the mail of a notice, under the general law, is not sufficient to bind a person who never receives it."[14] "If the mailed notice is in fact not received, then the notification is without any legal effect."[15] "However, there is a presumption that mailed matter, correctly addressed, stamped and mailed, was

---

[13] *Windom v. Ungerer*, 903 A.2d 276, 282 (Del. 2006) *citing State ex. rel. Hall v. Camper,* 347 A.2d 137, 138-139 (Del. Super. Ct. 1975).

[14] *Id.*

[15] *Id.*

received by the party to whom it was addressed."[16] "Merely denying receipt does not rebut the presumption, but it may create an issue of fact to be determined by the jury."[17]

A Christiana Care bill dated February 23, 2005 is the only evidence in the record that supports Mr. Breeding's claim that a bill was in fact sent to Travelers from Christiana Care on that date. That alone is insufficient evidence to conclude that as a matter of law the bill was actually mailed on that date. Furthermore, Mr. Breeding claims that Travelers failed to receive the bill allegedly sent on February 23, 2005 because Travelers failed to provide a correct mailing address for which to send the bill. Although Travelers doesn't address this claim, it appears from the record that First State was given an identical mailing address to which to send their bills and those bills were received and paid by Travelers without issue.

Travelers claims that it is entitled to summary judgment because it never received the bill allegedly sent by Christiana Care on February 23, 2005. However, if the bill was properly addressed, stamped and mailed by Christiana Care on February 23, 2005, Travelers mere denial of receipt would not rebut the presumption that the bill was received.[18] Travelers denial, however, may create an issue of fact to be determined by the jury.[19]

---

[16] *Id.*

[17] *Id. citing Jackson v. UIAB*, 1986 Del. Super. LEXIS 1367 at *5.

[18] *Id. citing Camper,* 347 A2d 138-139.

[19] *Id. citing Jackson v. UIAB*, 1986 Del. Super. LEXIS 1367 at *5.

Breeding v. Hillandale Farms of Delaware, et al.
C.A. No. 05C-06-049
January 31, 2007

In summary, a question of fact exists as to whether Christiana Care sent a bill to Travelers on February 23, 2005; whether Travelers provided an incorrect mailing address to which Christiana Care was to send their bill; and whether Travelers received the bill claimed to be sent by Christiana Care on February 23, 2005.

At this juncture, it is evident that neither party is entitled to judgment as a matter of law; therefore, the plaintiff's and defendant's motions for summary judgment are ***denied.***

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File